In that, in my view, he was right. He has confined himself to arguing that there was contributory negligence on the part of the workman, the respondent.

The evidence as to what happened is not as detailed as it might be, it never is, and it is of course perfectly clear that without some sort of inadvertence on the part of the plaintiff, I use the word "inadvertence" advisedly, the accident could not have happened. Nevertheless, in my view, it is clear that the primary cause, the fundamental cause, of the accident was the failure to comply with the machinery regulations, the failure to supply proper guard, and that such inadvertence as there was on the part of the workman did not go so far as to constitute negligence of which the court should take cognisance.

It has to be remembered that the workman, the plaintiff, was a young man of 19 years of age and had been employed in this type of work for only three months. By no stretch of the language could he be called an experienced workman.

His story was that at the time of the accident he was operating the machine. He was inserting a piece of metal into it and that while he was doing so his hand slipped in and was caught. There was no evidence to contradict him when he said that he was operating the machine. Mr. Cashin put it to us that there was a possibility that he was, as it were, lounging against the machine and his hand slipped in. Of course that is a possibility. Everything is a possibility. But there was the plaintiff's own evidence which was not contradicted that he was operating the machine and the hypothesis advanced by counsel was not put to him in cross-examination; it was something, as I understand Mr. Cashin to have said, that he put to the judge in the course of argument. If then the plaintiff was engaged in operating the machine he was operating it for his employer's benefit and it seems to me difficult to suppose that any inadvertence on his part could have gone beyond this that he was concentrating more on his work for his employer than on his own safety. In the circumstances I am not prepared, having regard to the policy of the law which, of course, is to protect workmen operating potentially dangerous machinery, to say any inadvertence on the part of the plaintiff amounted to contributory negligence as we understand that expression.

The appeal is dismissed with costs and the deposit should be paid to the respondent against his taxed costs.

Ong Hock Thye F.J. (delivering oral judgment): I agree with my Lord.

With regard to the cause of the accident, I am satisfied that, so far as the respondent was concerned, whatever he did he must have done through inadvertence, which is the type of conduct for which protection is contemplated by the safety regulations, as explained in the case of *Mitchell* v. *North British Rubber Co. Ltd.*[1] referred to by me in *Lim Thong Eng* v. *Sungei Choh Rubber Co. Ltd.*[2]

My only further observation is that I share the view of my Lord that the damages awarded in this case had been very very generous indeed.

I would dismiss the appeal with costs.

Gill J.: concurred.

Appeal dismissed.

Solicitors: *Murphy & Dunbar; Kam Woon Wah & Co.*

ANG TIONG SENG v. KONG AH LOI

[A.C.J. (Wee Chong Jin C.J.) March 19, 1965]

[Singapore — District Court Appeal No. 4 of 1965]

Local Government Ordinance, 1957, s. 298 — Closing order — Occupier repairing house but without obtaining prior approval of local authority — Whether entitled to deduct amount spent from rents.

Landlord and Tenant — Repairs to premises under closing order — Whether tenant entitled to recover amount from landlord.

In this case a closing order had been made against certain premises. The occupier thereupon repaired the premises and spent $2,800 therefor. The owner brought an action *inter alia* to recover arrears of rent and the tenant counterclaimed for $2,800. Judgment on the counterclaim was given in favour of the tenant and the owner appealed.

Held: as the tenant had failed to obtain the approval of the local authority before executing the repairs she was not entitled to recover the amount spent by her from the owner and therefore the appeal must be allowed and the judgment on the counterclaim set aside.

[Editorial Note: The respondent applied to the Federal Court (Federal Court Civil Application No. Y2 of 1966) for special leave to extend the time within which she had to file a notice of appeal. In her affidavit filed in support of her application she deposed that she was unable to raise money to prosecute the appeal and that she had made an application to the Legal Aid Bureau for legal aid. This application for legal aid was also made outside the period for filing a notice of appeal. The Federal Court (Tan Ah Tah F.J., Buttrose and Winslow JJ., June 22, 1966) dismissed the application on the ground that there were no special circumstances to justify the application for extension of time. The following cases were considered by the court:— *Wilkinson* v. *R.* (1916), 19 W.A.L.R. 17; *A. Majeed* v. *Yeo Chng Tay* [1964] M.L.J. 75; *Ratnam* v. *Cumaraswamy* [1965] 1 M.L.J. 285; *Addison* v. *Addison* [1960] 1 W.L.R. 1088; *Re Noble (A Bankrupt)* [1965] Ch. 129; *Re Coles & Ravenshear* [1907] 1 K.B. 1.]

Case referred to:—

(1) *Yap Choo Lian* v. *Chan Ah Yong* [1952] M.L.J. 166.

DISTRICT COURT APPEAL.

Chan Sek Keong for the appellant.

N. A. Christopher for the respondent.

Wee Chong Jin C.J.: The appellant is the owner of premises known as No. 6 Cheng Yan Place which was let by him to the respondent.

In 1960 the appellant was served with a nuisance notice requiring him to carry out certain structural repairs to the premises and on his failure to effect the repairs he was subsequently fined by a magistrate's court and a nuisance (abatement) order was made requiring him to abate the nuisance.

The appellant continued to disregard the abatement order and thereupon the court on evidence submitted by the appellant, made a closing order on 7th September 1961 under section 248 of the Local Government Ordinance, 1957, and fined the appellant for his failure to comply with the abatement order.

The respondent when served with the closing order engaged a building contractor to carry out repairs to the premises and when the repairs were completed applied to the court to set aside the closing order which application was granted. The cost of the repairs amounted to the sum of $2,800. Since September 1961 she refused to pay to the appellant the monthly rents due in respect of the premises and accordingly the appellant commenced this action against her for recovery of possession and for arrears of rent and mesne profits.

The respondent disputed the claim for possession and counterclaimed "to set off against the arrears of rent and future rent the sum of $2,800" she had expended to repair the premises.

At the hearing the appellant abandoned his claim for possession and the only issue was whether the respondent was entitled to the relief she sought by way of counterclaim. The trial judge held that the appellant was entitled to judgment for the arrears of rent he claimed and that the respondent was entitled to judgment on her counterclaim of $2,800 and allowed the sum of $592 being the amount of the arrears of rent to be set off against the sum of $2,800.

The appellant now appeals against the judgment on the counterclaim and it is conceded by counsel for the respondent that the respondent is only entitled to set off the $2,800 against arrears of rent and future rent.

The only remaining question is whether the respondent is entitled to this set-off and the answer to this question depends on the construction of the relevant provisions of the Local Government Ordinance, 1957, and in particular the provisions of section 298.

It is clear from the provisions of section 248(7) that a closing order can only be made if it has been proved to the satisfaction of the court that by reason of a nuisance a dwelling-house is unfit for human habitation.

It is clear also that under section 248(8) a closing order can be cancelled by the court if it is satisfied that the dwelling-house has been rendered fit again for human habitation.

It seems to me to follow that these two subsections of section 248 of the Local Government Ordinance, 1957, by necessary implication envisages a situation where a person who is affected by a closing order may wish to take steps and may lawfully take steps to render a dwelling-house fit again for human habitation. One of such persons, and indeed he is specifically referred to in section 248(14), is the occupier of the dwelling-house in question.

This is provided by section 298 which is as follows:—

> "Whenever default is made by an owner of any premises in the execution of any work required under this Ordinance to be executed by him, an occupier of such premises may, with the approval of the local authority, cause such work to be executed and the expense thereof shall be paid to him by the owner or the amount may be deducted out of the rent from time to time becoming due from him to such owner and such occupier may, in the absence of any special agreement to the contrary, retain possession until such expense has been fully reimbursed to him."

Counsel for the appellant contends however that on the true construction of this section the occupier, if he executes the work without the prior approval of the local authority, is not entitled to reimbursement or to retain possession until full reimbursement. He relies on the case of *Yap Choo Lian* v. *Chan Ah Yong*.[1] In that case Murray-Aynsley C.J. held, where a tenant of premises, the subject of a closing order, had executed work which the owner had failed to execute, after representation to the then local authority from which it appears that the local authority had resolved to defer the hearing of an application for an ejectment order against the tenant "to enable herself to carry out the works necessary for abatement of the nuisance", that the resolution of the local authority could be construed as an approval under section 373 of the Municipal Ordinance, which section is for present purposes in *pari materia* with section 298 of the Local Government Ordinance, 1957.

Counsel for the respondent urged before me that as the magistrate considered and granted the application to set aside the closing order in the presence of counsel for the appellant and as no objection was raised by the local authority to the application, the respondent had carried out the repairs with the approval of the local authority within the meaning of section 298 although

the "approval" was subsequent to the carrying out of the work.

I am unable to accept this contention. In *Yap Choo Lian's* case, Murray-Aynsley C.J. clearly considered that the occupier had to obtain the prior approval of the local authority before executing any work and I agree with his view.

I would accordingly allow the appeal and set aside the order giving judgment for the respondent on the counterclaim and the order as to costs on the counterclaim and substitute therefor an order dismissing the counterclaim with costs. The appellant will have the costs of this appeal.

Appeal allowed.

Solicitors: *Braddell Bros.; N. A. Christopher.*

ABDUL RAHMAN TALIB v. SEENIVASAGAM & ANOR.

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Ong Hock Thye F.J.) March 21, 1966]

[K.L. — Federal Court Civil Appeal No. 112 of 1964]

Libel and Slander — Libel — Defence of justification — Views of judge on credibility of witnesses — Defamation Ordinance, 1958, s. 8.

This was an appeal against the decision of Hepworth J. who had held that the defendants had made out their defence of justification ([1965] 1 M.L.J. 142).

The plaintiff/appellant had claimed damages for slander in respect of a verbal statement made by the 1st defendant, and for libel in respect of written statements made by the 1st and 2nd defendants, alleging corrupt practices by the plaintiff. The alleged slander was contained in a statement made by the 1st defendant at a meeting at the Chinese Assembly Hall, Kuala Lumpur, referring to and repeating what he had already said as a member of Parliament in the House of Representatives, and the alleged libels were contained in (a) a written statement handed over by the 2nd defendant to persons present at that meeting and (b) a written statement handed over by the 1st defendant to a press representative at that meeting. The 1st defendant in his defence pleaded qualified privilege, fair comment and justification. The second defendant pleaded justification. The trial judge held that the defence of qualified privilege failed but that the defendant's defence of justification succeeded.

Held: (1) the learned trial judge had drawn the proper inferences from proved facts, in holding as he did that the plaintiff had received favours but not money and in coming to the conclusion that although the defendants had failed to prove the truth of the charge relating to money, the imputation in that respect did not materially injure the plaintiff's reputation having regard to the truth of the rest of the charges;

(2) taking the evidence in the case as a whole and on the balance of probabilities, the defence of justification must succeed.

Per Thomson L.P.: In the circumstances of this case very considerable weight must be given to the views of the trial judge on the relative credibility of the witnesses.

Cases referred to:—

(1) *Belt* v. *Lawes* (1882), 51 L.J. Q.B. 359.

(2) *Archbolds Ltd.* v. *S. Spanglett Ltd.* [1961] 1 All E.R. 417, 421.

(3) *Adam* v. *Ward* [1917] A.C. 309, 334.

FEDERAL COURT.

R. H. V. Rintoul, Eusoffe Abdoolcader and *G. S. Hill* for the appellant.

Chan Nyarn Hoi for the first respondent.

Dato' S. P. Seenivasagam for the second respondent.

Cur. Adv. Vult.

Barakbah C.J. (Malaya): The plaintiff in this case was the Minister for Health in the Government of the Federation of Malaya. The first defendant is an advocate and solicitor and a Member of the House of Representatives. The second defendant is a company director. The plaintiff's claim was for damages for libel and slander alleged to have been published by the defendants at the Chinese Assembly Hall in Kuala Lumpur on 11th September 1963.

Hepworth J. dismissed the claim and the plaintiff now appeals to this court against his decision. The first defendant has also filed a cross-appeal but, according to him, his purpose was merely to support the judge's grounds of judgment.

I shall endeavour to set out the facts of the case as concisely as possible. In 1958, the second defendant had applied to the Pahang Government for a licence to extract bat guano at a place called Kota Gelanggi, Pulau Tawar, in the District of Jerantut in the State of Pahang. The guano was to be sold as fertiliser. In 1959 armed with a letter of introduction, he went to see the Mentri Besar of Pahang in connection with his application. In April 1960 a licence was granted to him, expiring on 31st December 1960.

From time to time, this licence was renewed; first, to 30th June 1961, then to 31st December 1961, and finally to 30th June 1962, all in the name of the second defendant. He stated that sales in any large quantity were not possible as the renewals of the licence were only for short periods each time, rendering it impossible to guarantee a steady continuous supply to prospective purchasers.

About the end of 1961 the second defendant came to understand that the Pahang Government was proposing to change its policy in regard to such licences by issuing them only to limited companies rather than to individuals. Consequently he approached one Che Sabri bin Haji Dhalan with a view to his putting up the capital to form a company. Che Sabri agreed and contributed $4,300 on the understanding that he was to receive shares in the company for such amount in due course. On 11th December 1961 the Sharikat Berhad Baja Asli Melayu or Malay